United States District Court District of Massachusetts

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)	Criminal No.
)	05-10220-NMG
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MEMORANDUM & ORDER

GORTON, J.

Pending before the Court is a claim of ineffective assistance of counsel for failure to file a direct appeal, raised in Ground One of the 28 U.S.C. § 2255 petition filed by defendant James D. Goodwyn ("Goodwyn").

In a Memorandum & Order dated June 29, 2011, the Court took under advisement Ground One of the petition pending submission of an affidavit by Attorney Joseph F. Krowski addressing 1) whether he consulted with Goodwyn regarding a direct appeal and 2) whether (and if so, when) Goodwyn instructed him to file a direct appeal. On July 6, 2011, at the Court's direction, Attorney Krowski submitted a sworn affidavit.

On the basis of the sworn affidavits submitted by Goodwyn and Attorney Krowski, the Court finds that an evidentiary hearing is warranted to resolve petitioner's claim raised in Ground One. See Garvey v. United States, 2010 WL 5437227, *6 (D. Mass. Dec.

23, 2010) (finding evidentiary hearing necessary to resolve disputed issue of material fact with respect to counsel's alleged failure to file direct appeal despite petitioner's request); see also United States v. McGill, 11 F.3d 223, 225-26 (1st Cir. 1993) (setting forth standard for evidentiary hearing).

Accordingly, pursuant to Rule 3(a)(1) of the Rules for United States Magistrate Judges in the United States District Court for the District of Massachusetts, the case is referred to Magistrate Judge Marianne B. Bowler for an evidentiary hearing on Ground One and the submission of a Report and Recommendation in that regard.

So ordered.

/s/ Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

Dated July 8, 2011